

SECRETSAPC 14058Copy 1 of 4

26 March 1957

MEMORANDUM FOR THE RECORD

SUBJECT: Concurrence in Amendment No. 2 to Contract No. PO-660 with Eastman Kodak Company, Rochester, New York, Project [REDACTED] (AQUATONE).

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1. Contract No. PO-660 with Eastman Kodak Company provides for furnishing by the Contractor of all labor and certain materials required for the operation and maintenance of the Project AQUATONE film processing plant at Rochester, New York. The contract is a time and material type containing provisions for reimbursement of direct labor costs at specified hourly rates.

2. The Contractor by letter dated 6 March 1957 and in a meeting with the Project Contracting Officer on 8 March 1957, has stated that through error in the preparation of Appendixes II and III to the contract, incorrect hourly rates have been specified for certain labor categories for the contract periods of 26 December 1955 to 9 July 1956 and 9 July 1956 through 30 December 1956, with a resulting undercharge against the contract of approximately \$18,000.

3. The Contractor contends that through its errors in computations, the particular "Basic Hourly Rates" stated in Appendixes II and III of the contract and set forth in Column 1, below, should be the "Basic Hourly Rates" stated in Column 2. The Basic Hourly Rates shown in the Appendixes of the contract are the contractor's average rates for each labor category specified, to which is added overhead, G. and A. expense and profit to arrive at the "Contract Hourly Rates":

	Column 1 <u>Basic Hourly Rates</u>	Column 2 <u>Basic Hourly Rates</u>
<u>Appendix II</u>		
Laboratory Hand #1	[REDACTED]	[REDACTED]
Laboratory Hand #2	[REDACTED]	[REDACTED]
Laboratory Hand #3	[REDACTED]	[REDACTED]





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DOCUMENT NO. 436
 NO CHANGE IN CLASS.
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 CLASS. CHANGED TO: TS S C
 NEXT REVIEW DATE: 2011
 AUTH: PR 70-2
 DATE: 08/25/01 REVIEWER: 010956

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<u>Appendix II</u>	<u>Column 1</u> <u>Basic Hourly Rates</u>	<u>Column 2</u> <u>Basic Hourly Rates</u>
Laboratory Hand #4		
Laboratory Hand #5		
Clerical <i>Draftsman #2</i>		
<u>Appendix III</u>	25X1A	25X1A
Laboratory Hand #1		
Laboratory Hand #2		
Laboratory Hand #3		
Laboratory Hand #4		
Laboratory Hand #5		
Clerical <i>Draftsman #1</i> <i>"Shop Labor" #2</i>		

4. In negotiating the "Contract Hourly Rates" for inclusion in the contract, it is the intent of the parties to use the contractor's then current average hourly rates, overhead, and G. and A. expense, plus profit. The rates in question submitted by the contractor were, through error, not based on the then current average hourly rates as intended. Although such rates were incorporated into Appendixes II and III of the contract, actually the intent of the negotiations was not carried out and acceptance of the rates was a mutual mistake between the contracting parties.

5. It is the intent of the contract that the Contractor receive a fair and reasonable price for the performance of the contract work and services. This is brought out by the provisions of PART VI, REPRICING, of the contract schedule which provide not only for periodic prospective revision of the "Contract Hourly Rates" based on overhead and G. and A. Expense experience, but also provides that the hourly rates may be revised from time to time to reflect general wage and salary adjustments. The Contractor contends that in view of the undercharge resulting from the error in hourly rates, it will suffer a substantial loss in profit, instead of a fair and reasonable return under the contract.

6. In view of the circumstances surrounding the mutual mistake, and the fact that Contract No. PO-660 has been certified by the Director of Central Intelligence under date of 2 June 1955 to be for

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object of a confidential, extraordinary and emergency nature pursuant to Section 10(b) of Public Law 110, it is considered proper and consistent with the authority granted certain Departments of the Government under Executive Order 9001, December 27, 1941, as amended and extended by Executive Order 10210, February 2, 1951, to amend the contract, without consideration, to correct the mutual mistakes in "Contract Hourly Rates" retroactively to 26 December 1955.

7. Sufficient funds have been previously obligated under Contract No. PO-660, as amended, to adequately cover the Contractor's claim for additional payment, approximating \$18,000, as proposed in Amendment No. 2, attached hereto.

8. Approval of Amendment No. 2 to Contract No. PO-660 and execution thereof on behalf of the Agency by the authorized Project Contracting Officer is recommended.


Contracting Officer

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CONCURRENCES:

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Comptroller

Approval requested in Paragraph 8,
granted.

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RICHARD M. BISSELL, JR.
SA/PC/DCI - Project Director

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